

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5291 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

BHAGWATSINH M VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MR HJ NANAVATI for Petitioners
MR AD DESAI, AGP for Respondent No. 1
MR AD OZA for Respondent No. 2
MR VD PARGI for MR VH DESAI for Respondent No.3 & 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 16/10/97

ORAL JUDGEMENT

RULE. Service of Rule is waived by learned
Assistant Government Pleader Mr.A.D.Desai for Respondent

No.1, Mr.A.D.Oza for Respondent No.2 and Mr.V.D.Pargi on behalf of Mr.V.H.Desai for Respondents Nos.3 and 4.

2. The petitioners in this Special Civil Application are teachers of respondent No.3 Primary School. Their say is that respondents Nos.3 & 4 are not paying pay and pay-scale as prescribed by the State Government as they are required to pay under Clause 9 of Schedule F to the Bombay Primary Education Rules, 1949 (hereinafter referred to as the Rules). It is also their say that respondents Nos.3 & 4 though deducting the contribution of the employees to be deposited with the Provident Fund Commissioner, are not depositing the same even after regular deductions from their salary. The petitioners have filed different applications before the Tribunal being Applications Nos.262 of 1996 to 267 of 1996 inter alia claiming pay and pay-scale payable to them as per the Government Resolution and further direction that they may be paid their unpaid salaries from June 1996. The said applications are pending. The further say of the petitioners is that by order dated 8th May 1997 the services of the petitioners have been terminated on the ground of inability to pay to the petitioners their pay and salaries as prescribed by the State Government. The petitioners have approached the Tribunal by way of separate applications which have been registered as Applications Nos.141 to 147 of 1997. A statement was made before the Tribunal that they are withdrawing the order of termination with liberty to pass appropriate order in accordance with law. In view of this, the Tribunal passed an order dated 19th June 1997 setting aside the order of termination and directed the school management to pay to the applicants pay and pay-scales which remained unpaid. Thereafter, on 19th June 1997, another notice came to be issued to the petitioners asking them to show cause why their services should not be terminated on the ground of dwindling strength of students. The say of the petitioners is that respondents Nos.3 & 4 were adopting a strategy by transferring students to another school of the same management, namely, New Progressive Primary School. The said school is in the same building. The entire purpose is somehow to discontinue the services of the petitioners and not to comply with the orders of the Tribunal in the matter of payment of salary and other benefits like gratuity etc. On these facts, the petitioners seek direction not to permit the school management to close down and/or give permission for reduction and/or closure of the respondent - school.

3. Mr.Gulabbhai M.Patel, District Education Officer,

has filed an affidavit. It is stated therein that the school management has sent recently an application to the Director of Primary Education, Gandhinagar for closing the school. The District Education Officer has disapproved the act of the management observing that, on one hand they are seeking permission for closure and on the other hand starting a new school in the same premises with the same students and most of the same staff. It is also stated that:

" I further state that there appears to be some dispute going on between the petitioners and the school management and in order to circumvent the orders of the court or probable action against the school management, the management has resorted to an illegal action of closing down the school. As per the provision of Clause 5 of the Schedule F vide Rule 166 (2) and 111 (2) (c) of the Bombay Primary Education Act, 1949, it is incumbent upon the school to apply for closure of the school or the classes well in advance, i.e. six months prior to intended closure and to take prior permission of the concerned authority before closure. In the instant case, the respondent - school has not followed such procedure and without prior permission it has tried to show under camouflage that existing school is closed and a new school is started."

4. Mr. Vithalbhai M.Patel, Managing Trustee has also filed an affidavit. It is stated that the present petition is premature as the respondent - Trust has not closed primary section wherein the petitioners are working as Assistant Teachers. But, in fact, the trust has sent a proposal for closure and the same is pending before the State Government. Certain clarifications have been given with respect to the strength of the students in the school. I need not enter into the controversy evolved by the statement made by the District Education Officer in his affidavit.

5. In view of the aforesaid, this Special Civil Application is allowed and it is directed that before any decision is taken permitting respondents Nos.3 & 4 to close the school, it will be fully ensured that the petitioners are protected and the orders of the Tribunal are complied with. Rule is made absolute to the aforesaid extent.

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